

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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RICKY LYNCH, JERRY FINCH, JR.,  
DAMIEN R. SMALL, LEROY C. JONES,  
THEODORE DAVIS, MACK BUTLER, EDDIE M.  
SIMS, DALLAS JOHNSON, FELIPE ROVELO,  
ROBERT BERNHARD, ADAM WILLIAMS,  
DONALD BANGS, EDWARD KEYES, JASON COOPER,  
KEVIN M. MASSEY, DARRYL ISSAC, CALVIN  
FELDER, ANDREW ZEIGLER, CHESTER INGRAM,  
DONNELL STENGLE, KEVIN KING, HOWARD DAVIS,  
THOMAS HARPER, DARYL MILLER, DEWAYNE  
BUTLER, KEITH KING, and RAY KELLY,

MEMORANDUM AND ORDER

11-CV-2602 (JS)(ARL)

Plaintiffs,

-against-

VINCENT F. DEMARCO, individually and  
in his official capacity as Sheriff  
of County, JOHN DOE and JANE DOE,  
individually and in their official  
capacity as Superintendent of Suffolk  
County,

Defendants.

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APPEARANCES:

For Plaintiffs: Mack Butler, 217709, Pro Se  
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SEYBERT, District Judge:

Presently pending before the Court is the pro se Complaint brought by the above-named present and former inmates at the Suffolk County Correctional Facility ("SCCF") (collectively, "Plaintiffs") pursuant to 42 U.S.C. § 1983 ("Section 1983") complaining about the conditions at the SCCF. The Court finds that the appointment of pro bono counsel is warranted pursuant to 28 U.S.C. § 1915(e)(1).

Pursuant to 28 U.S.C. § 1915(e)(1), "[t]he court may request an attorney to represent any person unable to afford counsel." Courts possess broad discretion when determining whether

appointment is appropriate, "subject to the requirement that it be 'guided by sound legal principle.'" Cooper v. A. Sargent Co., Inc., 877 F.2d 170, 171-72 (2d Cir. 1989) (quoting Jenkins v. Chemical Bank, 721 F.2d 876, 879 (2d Cir. 1983)) (*per curiam*). The Second Circuit set forth the guiding legal principle as follows:

First, the district court must 'determine whether the indigent's position seems likely to be of substance.' If this threshold requirement is met: "the court should then consider the indigent's ability to investigate the crucial facts, whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder, the indigent's ability to present the case, the complexity of the legal issues and any special reason . . . why appointment of counsel would be more likely to lead to a just determination.

Rivas v. Suffolk County, Nos. 04-4813, 04-5198, 2008 WL 45406, at \* 1 (2d Cir. Jan. 3, 2008) (quoting Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986)). The Second Circuit has explained that these factors are not restrictive and that "[e]ach case must be decided on its own facts." Hodge, 802 F.2d at 61.

The Court has reviewed Plaintiffs' Complaint and Amended Complaint and the attachments to the Complaints and finds that the appointment of counsel is warranted. The threshold factor of Hodge has been met and upon consideration of the need for assistance in the orderly progression of the case, the balance of factors weigh in favor of appointment of counsel. Accordingly, the Court's pro se office is directed to seek the appointment of pro bono counsel for Plaintiffs forthwith.

The Clerk of the Court is directed to mail a copy of this Order to the Plaintiffs. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: November 22, 2011  
Central Islip New York